

**ASSEMBLY BILL**

**No. 325**

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**Introduced by Assembly Member Alejo**

February 13, 2013

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An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as introduced, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 3 years after a specified action pursuant to existing law. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning Law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to

challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, that the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. It is the intent of the Legislature in enacting  
2     Section 2 of this act to modify the court's opinion in Urban Habitat  
3     Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with  
4     respect to the interpretation of Section 65009 of the Government  
5     Code.

6     SEC. 2. Section 65009 of the Government Code is amended  
7     to read:

8     65009. (a) (1) The Legislature finds and declares that there  
9     currently is a housing crisis in California and it is essential to  
10    reduce delays and restraints upon expeditiously completing housing  
11    projects.

12    (2) The Legislature further finds and declares that a legal action  
13    or proceeding challenging a decision of a city, county, or city and  
14    county has a chilling effect on the confidence with which property  
15    owners and local governments can proceed with projects. Legal  
16    actions or proceedings filed to attack, review, set aside, void, or  
17    annul a decision of a city, county, or city and county pursuant to  
18    this division, including, but not limited to, the implementation of  
19    general plan goals and policies that provide incentives for  
20    affordable housing, open-space and recreational opportunities, and  
21    other related public benefits, can prevent the completion of needed  
22    developments even though the projects have received required  
23    governmental approvals.

1 (3) The purpose of this section is to provide certainty for  
2 property owners and local governments regarding decisions made  
3 pursuant to this division.

4 (b) (1) In an action or proceeding to attack, review, set aside,  
5 void, or annul a finding, determination, or decision of a public  
6 agency made pursuant to this title at a properly noticed public  
7 hearing, the issues raised shall be limited to those raised in the  
8 public hearing or in written correspondence delivered to the public  
9 agency prior to, or at, the public hearing, except where the court  
10 finds either of the following:

11 (A) The issue could not have been raised at the public hearing  
12 by persons exercising reasonable diligence.

13 (B) The body conducting the public hearing prevented the issue  
14 from being raised at the public hearing.

15 (2) If a public agency desires the provisions of this subdivision  
16 to apply to a matter, it shall include in any public notice issued  
17 pursuant to this title a notice substantially stating all of the  
18 following: "If you challenge the (nature of the proposed action)  
19 in court, you may be limited to raising only those issues you or  
20 someone else raised at the public hearing described in this notice,  
21 or in written correspondence delivered to the (public entity  
22 conducting the hearing) at, or prior to, the public hearing."

23 (3) The application of this subdivision to causes of action  
24 brought pursuant to subdivision (d) applies only to the final action  
25 taken in response to the notice to the city or clerk of the board of  
26 supervisors. If no final action is taken, then the issue raised in the  
27 cause of action brought pursuant to subdivision (d) shall be limited  
28 to those matters presented at a properly noticed public hearing or  
29 to those matters specified in the notice given to the city or clerk  
30 of the board of supervisors pursuant to subdivision (d), or both.

31 (c) (1) Except as provided in subdivision (d), no action or  
32 proceeding shall be maintained in any of the following cases by  
33 any person unless the action or proceeding is commenced and  
34 service is made on the legislative body within 90 days after the  
35 legislative body's decision:

36 (A) To attack, review, set aside, void, or annul the decision of  
37 a legislative body to adopt or amend a general or specific plan.  
38 This paragraph does not apply where an action is brought based  
39 upon the complete absence of a general plan or a mandatory

1 element thereof, but does apply to an action attacking a general  
2 plan or mandatory element thereof on the basis that it is inadequate.

3 (B) To attack, review, set aside, void, or annul the decision of  
4 a legislative body to adopt or amend a zoning ordinance.

5 (C) To determine the reasonableness, legality, or validity of any  
6 decision to adopt or amend any regulation attached to a specific  
7 plan.

8 (D) To attack, review, set aside, void, or annul the decision of  
9 a legislative body to adopt, amend, or modify a development  
10 agreement. An action or proceeding to attack, review, set aside,  
11 void, or annul the decisions of a legislative body to adopt, amend,  
12 or modify a development agreement shall only extend to the  
13 specific portion of the development agreement that is the subject  
14 of the adoption, amendment, or modification. This paragraph  
15 applies to development agreements, amendments, and  
16 modifications adopted on or after January 1, 1996.

17 (E) To attack, review, set aside, void, or annul any decision on  
18 the matters listed in Sections 65901 and 65903, or to determine  
19 the reasonableness, legality, or validity of any condition attached  
20 to a variance, conditional use permit, or any other permit.

21 (F) Concerning any of the proceedings, acts, or determinations  
22 taken, done, or made prior to any of the decisions listed in  
23 subparagraphs (A), (B), (C), (D), and (E).

24 (2) In the case of an action or proceeding challenging the  
25 adoption or revision of a housing element pursuant to this  
26 subdivision, the action or proceeding may, in addition, be  
27 maintained if it is commenced and service is made on the  
28 legislative body within 60 days following the date that the  
29 Department of Housing and Community Development reports its  
30 findings pursuant to subdivision (h) of Section 65585.

31 (d) (1) An action or proceeding shall be commenced and the  
32 legislative body served within one year after the accrual of the  
33 cause of action as provided in this ~~subdivision~~, *subdivision* if the  
34 action or proceeding meets both of the following requirements:

35 ~~(1)~~

36 (A) It is brought in support of or to encourage or facilitate the  
37 development of housing that would increase the community's  
38 supply of housing affordable to persons and families with low or  
39 moderate incomes, as defined in Section 50079.5 of the Health  
40 and Safety Code, or with very low incomes, as defined in Section

50105 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. This subdivision is not intended to require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project.

~~(2)~~

(B) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter ~~3 of this division, pursuant to 3, Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913): 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915.~~

**A**

(2) A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or clerk of the board of supervisors by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. *This notice may be filed at any time within three years after an action described in subparagraph (B) of paragraph (1).* A notice or cause of action brought by one party pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(3) *After the adoption of a housing element covering the current planning period, no action shall be filed pursuant to this subdivision to challenge a housing element covering a prior planning period.*

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Sections 65700 and 65803, or any other provision of law, this section shall apply to charter cities.

(g) Except as provided in subdivision (d), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative

body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

SEC. 3. Section 65589.3 of the Government Code is amended to read:

65589.3. (a) In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

(b) *In any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with all of the requirements of this article, including, but not limited to, the requirements for public participation set forth in paragraph (7) of subdivision (c) of Section 65583, the element or amendment shall be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding that the housing element substantially complies with the requirements of this article.*

SEC. 4. Section 65755 of the Government Code is amended to read:

65755. (a) The court shall include, in the order or judgment rendered pursuant to Section 65754, one or more of the following provisions for any or all types or classes of developments or any or all geographic segments of the city, county, or city and county until the city, county, or city and county has substantially complied with the requirements of Article 5 (commencing with Section 65300):

(1) Suspend the authority of the city, county, or city and county pursuant to Division 13 (commencing with Section 17910) of the Health and Safety Code, to issue building permits, or any category of building permits, and all other related permits, except that the city, county, or city and county shall continue to function as an enforcement agency for review of permit applications for appropriate codes and standards compliance, prior to the issuance of building permits and other related permits for residential housing for that city, county, or city and county.

1 (2) Suspend the authority of the city, county, or city and county,  
2 pursuant to Chapter 4 (commencing with Section 65800) to grant  
3 any and all categories of zoning changes, variances, or both.

4 (3) Suspend the authority of the city, county, or city and county,  
5 pursuant to Division 2 (commencing with Section 66410), to grant  
6 subdivision map approvals for any and all categories of subdivision  
7 map approvals.

8 (4) Mandate the approval of all applications for building permits,  
9 or other related construction permits, for residential housing where  
10 a final subdivision map, parcel map, or plot plan has been approved  
11 for the project, where the approval will not impact on the ability  
12 of the city, county, or city and county to properly adopt and  
13 implement an adequate housing element, and where the permit  
14 application conforms to all code requirements and other applicable  
15 provisions of law except those zoning laws held to be invalid by  
16 the final court order, and changes to the zoning ordinances adopted  
17 after such final court order which were enacted for the purpose of  
18 preventing the construction of a specific residential development.

19 (5) Mandate the approval of any or all final subdivision maps  
20 for residential housing projects which have previously received a  
21 tentative map approval from the city, county, or city and county  
22 pursuant to Division 2 (commencing with Section 66410) when  
23 the final map conforms to the approved tentative map, the tentative  
24 map has not expired, and where approval will not impact on the  
25 ability of the city, county, or city and county to properly adopt and  
26 implement an adequate housing element.

27 (6) Mandate that notwithstanding the provisions of Sections  
28 66473.5 and 66474, any tentative subdivision map for a residential  
29 housing project shall be approved if all of the following  
30 requirements are met:

31 (A) The approval of the map will not significantly impair the  
32 ability of the city, county, or city and county to adopt and  
33 implement those elements or portions thereof of the general plan  
34 which have been held to be inadequate.

35 (B) The map complies with all of the provisions of Division 2  
36 (commencing with Section 66410), except those parts which would  
37 require disapproval of the project due to the inadequacy of the  
38 general plan.

1 (C) The approval of the map will not affect the ability of the  
2 city, county, or city and county to adopt and implement an adequate  
3 housing element.

4 (D) The map is consistent with the portions of the general plan  
5 not found inadequate and the proposed revisions, if applicable, to  
6 the part of the plan held inadequate.

7 (b) Any order or judgment of a court which includes the  
8 remedies described in paragraphs (1), (2), or (3) of subdivision (a)  
9 shall exclude from the operation of that order or judgment any  
10 action, program, or project required by law to be consistent with  
11 a general or specific plan if the court finds that the approval or  
12 undertaking of the action, program, or project complies with both  
13 of the following requirements:

14 (1) That it will not significantly impair the ability of the city,  
15 county, or city and county to adopt or amend all or part of the  
16 applicable plan as may be necessary to make the plan substantially  
17 comply with the requirements of Article 5 (commencing with  
18 Section 65300) in the case of a general plan, or Article 8  
19 (commencing with Section 65450) in the case of a specific plan.

20 (2) That it is consistent with those portions of the plan  
21 challenged in the action or proceeding and found by the court to  
22 substantially comply with applicable provisions of law.

23 The party seeking exclusion from any order or judgment of a  
24 court pursuant to this subdivision shall have the burden of showing  
25 that the action, program, or project complies with paragraphs (1)  
26 and (2).

27 *(c) Notwithstanding Section 65754.4 or subdivisions (a) and*  
28 *(b), in any action or proceeding brought pursuant to subdivision*  
29 *(d) of Section 65009, no remedy pursuant to this section or*  
30 *injunction pursuant to Section 65754.5 shall abrogate, impair, or*  
31 *otherwise interfere with the full exercise of the rights and*  
32 *protections granted to (1) an applicant for a tentative map pursuant*  
33 *to Section 66474.2, or (2) a developer pursuant to Sections 65866*  
34 *and 66498.1.*